IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/03/2004

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

SECOND APPEAL No.1031 of 1993

Bagyalakshmi .. Appellant

-vs-

1. Appasamy Asari
2. Murugan @ Murugesan
3. Mariappan .. Respondents

This second appeal is preferred under Sec.100 of the Code of Civil Procedure against the judgment and decree dated 30.6.1993 in A.S.No.10 2/1990 on the file of the Court of the Subordinate Judge, Srivilliputhur, confirming the judgment and decree dated 11.6.1990 in O.S.No.452 of 1986 on the file of the District Munsif, Srivilliputhur.

!For Appellant : Mr.Mathivanan
for Mr.G.Duraichamy

^For Respondents : Mr.D.Rajagopal for R1
Mr.S.Rajasekar for RR2 & 3

:JUDGMENT
The third defendant in a suit for declaration and other consequential reliefs, is the appellant herein.

2. The following facts are noticed in the pleadings of the parties:
The suit properties belonged to the plaintiff. In respect of those properties and other properties, the plaintiff executed a registered power of attorney on 23.8.1982 in favour of the first defendant. On coming to know that the first defendant was ing against the interest of the plaintiff, a notice was issued by the plaintiff on 6.2.1985 cancelling the said power. Accepting the same, the first defendant has also surrendered the power of attorney to the plaintiff. On 29.8 .1983, the plaintiff conveyed the first item of property to one Nachiappan, under a sale deed, and the same was attested by the first defendant. The said power of attorney neither came into force nor was acted upon. The first defendant in collusion with the defendants 2 and 3 has executed two documents, one a registered mortgage in favour of the second defendant on 19.3.1986 for a consideration of Rs.20,000/- under Ex.A8 and another a sale deed in favour of the third defendant under Ex.A9 on 26.5.1986 for a consideration of Rs.22,500/-, wherein the mortgage amount was to be adjusted. Both these documents were invalid in law, and

under such circumstances, the plaintiff was compelled to file the suit for declaration that both the documents marked as Exs.A8 and A9 were invalid and other consequential reliefs.

3. The first defendant filed a written statement which was adopted by the defendants 2 and 3. It was contended by the defendants that the first defendant pursuant to the registererd power of attorney, executed by the plaintiff, has executed both the mortgage deed under Ex. A8 in favour of the second defendant and the sale deed under Ex.A9 in favour of the third defendant; that the said power was actually in force and has also been acted upon; that the said power, which was a valid one, could not be cancelled by way of a notice; that the said cancellation has no force in law; that both the documents were valid in law; that the third defendant has become entitled to the property pursuant to the sale in her favour, and hence, the suit was to be dismissed.

4. Necessary issues were framed by the trial Court, which tried the suit and decreed the same. An appeal by the third defendant met the same fate at the hands of the first appellate Court. Hence, this second appeal by the third defendant aggrieved over the said judgment.

5. At the time of admission, the following substantial questions of law were formulated by this Court:

(1) Whether a registered power of attorney can be cancelled by a letter addressed to the agent alone?

(2) Whether the findings of the Courts below are vitiated in view of the presumption drawn by the Courts below with regard to the knowledge of the appellant regarding the cancellation of power of attorney in favour of the 1st defendant by the plaintiff?

6. This Court heard the learned Counsel for the appellant/third defendant and also the learned Counsel for the respondents on those contentions.

7. After careful consideration of the rival submissions and scrutiny of the available materials, this Court is of the considered view that the appeal does not carry any merits whatsoever.

8. Admittedly, the suit property belonged to the plaintiff. It is also not in dispute that the plaintiff executed a registered power of attorney in favour of the first defendant on 23.8.1982. The case of the plaintiff before the Courts below and equally here also is that the said power of attorney did not come into existence at all, and apart from that, a notice was also issued on 6.2.1985, cancelling the said power of attorney. A strong circumstance, which stood in favour of the plaintiff to hold so, was that the plaintiff himself has executed a sale deed in favour of one Nachiappan on 29.8.1983 under Ex.A2, and the same was also attested by the first defendant, the power holder. Hence, it would be abundantly clear that though a registered power of attorney was executed, the same was not acted upon by the first defendant. In such circumstances, the contention of the appellant' s side that the power deed, executed in favour of the first defendant, was acted upon cannot be accepted.

9. Another contention put forth by the appellant's side that the power deed executed by the plaintiff in favour of the first defendant, could not be cancelled by a notice does not require any consideration for the simple reason that the power deed though executed, was not actually acted upon by the party concerned. The next contention raised by the learned Counsel for the

appellant, is that it was a power coupled with interest, and hence, it cannot be cancelled by way of a notice, as found in the instant case. The Court is unable to agree with the said contention for the simple reason that the said power of attorney cannot be said to be one coupled with interest. A perusal of the same would also indicate so.

10. The learned Counsel for the appellant would further submit that the third defendant was a purchaser of the property for consideration without notice, and hence, her interest has got to be protected, and it was a case brought forth in collusion between the plaintiff and the first defendant. This contention cannot be accepted, since the third defendant has not filed a written statement, but has adopted the written statement of the first defendant. It is pertinent to note that this contention was never raised in the pleadings before the trial Court, and it is a stand now taken before this Court. In view of the lack of pleading in that regard, the said contention in this second appeal does not require any consideration. Hence, the Court is unable to notice anything to interfere in the judgments of the Courts below.

11. In the result, this second appeal is dismissed, confirming the judgments and decrees of the lower Courts and leaving the parties to bear their costs.

Index: yes
Internet: yes

nsv/

To:
1. The Subordinate Judge
Srivilliputhur
2. The District Munsif
Srivilliputhur

3. The Record Keeper
V.R. Section
High Court, Madras.

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